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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,921	04/12/2001	Kazunori Masaki	35.G2772	5234

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NEW YORK, NY 10112

EXAMINER

BARTUSKA, FRANCIS JOHN

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,921

Applicant(s)

MASAKI, KAZUNORI

Examiner

F. J. BARTUSKA

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MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 43-51, 67 and 68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 43-51, 67 and 68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1,2,4,5,7,8,49 and 50 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Joseph. Joseph discloses a network 3 for selling shoes in a particular price range, see col. 5, lines 16-20, and outputting alternative shoes in the price range if the selected shoe is not available, see col. 6, lines 4-36. These claims call for the interface to enable the user to select one of the designated pay service and an alternate pay service. Joseph discloses in col. 6, lines 4-8 that the interface is enabled to display a plurality of items any one of which may be selected.

2. Claims 43-48, 67 and 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Storey. Storey discloses an on-line network for purchasing articles and receiving rewards based upon the price of the purchased articles, see col. 2, lines 28-33 and col. 7, line 22. The awards are available immediately upon purchase of the merchandise, see col. 2, lines 3-12. Different options for viewing the awards are disclosed in col. 8, lines 29-33 and col. 9, lines 12-16. The award points may be used for purchasing a gift certificate, see col. 7, lines 25-28;

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therefore, the user may select a service and an additional service that requires an additional charge.

3. Claims 1,2,4,5,7,8,43-50, 67 and 68 are rejected under 35

U.S.C. 102(e) as being clearly anticipated by Walker et al, of record.

Walker et al disclose a network, see col. 3, last line to col. 4, line 2, for selling a good or service, see col. 3, line 23, at one price or upgrading to another good or service at a round up price, see col. 3, lines 25-28 and col. 5, lines 46-56. Walker et al disclose a request for a product, see col. 6, lines 1-13, detecting an amount tendered, see col. 6, lines 20 and 21, and displaying an interface that enables the user to select the product and an additional product for the amount tendered that is greater than the cost of the first product, see col. 6, lines 45-49.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3,6,9 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joseph. Joseph discloses a network 3 for selling shoes in a particular price range, see col. 5, lines 16-20, and outputting alternative shoes in the price range if the selected shoe is not available, see col. 6, lines 4-36. Joseph does not disclose that the service is a binding service. It would have been obvious to one of ordinary skill in the art to offer any service including a binding service in view of the teaching in col. 3, lines 32-35 in Joseph that the invention is applicable to any appropriate retail store.

Response to Arguments

6. The applicant's remarks have been considered but have not been found persuasive because Joseph discloses an interface that displays a plurality of items any one of which may be selected and Storey discloses that the awards points can be used as money to purchase a gift certificate.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. J.

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BARTUSKA whose telephone number is 703-308-1111. The examiner can normally be reached on MONDAY-FRIDAY (ALTERNATE FRIDAYS OFF).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT P. OLSZEWSKI can be reached on 703-308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fjb


F. J. BARTUSKA
PRIMARY EXAMINER 3-4-04